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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,618	02/12/2001	Martin Sommer	SGW-109	9111
23599	7590	12/28/2004	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			CHEVALIER, ALICIA ANN	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/780,618	SOMMER ET AL. <i>[Signature]</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alicia Chevalier	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 November 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 and 9-29 is/are pending in the application.
- 4a) Of the above claim(s) 7,12,23,24 and 28 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,9-11,13-22,25-27 and 29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**RESPONSE TO AMENDMENT**

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Upon reconsideration the examiner agrees with Applicant's that the finality of the previous office action, mailed August 25, 2004, was premature. Therefore, the finality of the office action mailed August 25, 2004 is withdrawn and an action on the present amendment, filed November 24, 2004, follows.

2. Claims 1-7 and 9-29 are pending in the application, claim 7, 12, 23, 24 and 28 are withdrawn from consideration. Claim 8 has been cancelled.
3. Amendments to the claims, filed on November 24, 2004, have been entered in the above-identified application.

***WITHDRAWN REJECTIONS***

4. The 35 U.S.C. §102 rejection of claims 1-6, 9-11, 13-22, 25-27 and 29 over hall (US Patent No. 4,135,789), made of record in the office action mailed March 8, 2004, pages 5-7, paragraph #13 has been withdrawn due to Applicant's amendment in the response filed November 24, 2004.

***NEW REJECTIONS***

5. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-6, 9-11, 13-22, 25-27 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claim 1 contain(s) the limitation "sealed only with material which is hermetically sealed to said brittle-fracture material." The specification does not disclose that other materials are excluded from helping to hermetically seal the at least one opening in the brittle-fracture material, therefore this limitation is considered new matter.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), aff'd mem., 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. MPEP § 2173.05(i)

The new matter should be deleted.

Applicant argues that support for the amendments to the claims can be found, for example, in the drawings. However, the Examiner is unable to find in the specification or derive from the drawings that other materials are excluded from helping to hermetically seal the at least one opening in the brittle-fracture material.

***Claim Rejections - 35 USC § 102***

8. Claims 1-6, 9-11, 13-15, 17, 18, 21, 22, 26, 27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Pace (U.S. Patent No. 5,866,441).

Regarding Applicant's claim 1, Pace discloses a molded element (*chip, col. 6, line 66*) that comprises brittle-fracture material (*substrate, col. 7, line 1*) with at least one opening (*figure 5a*) that is sealed only with sealing material (*feed-throughs, col. 7, line 2*) which is hermetically sealed (*col. 7, lines 10-11*) to said brittle-fracture material.

The limitation "wherein the brittle-fracture material and the sealing material are permanently bonded together by a pressure weld" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pace discloses that the brittle fracture material and sealing material are permanently bonded with a hermetic seal.

Regarding Applicant's claim 2, Pace discloses that the brittle-fracture material is glass, glass ceramic or ceramic (*ceramic or glass/ceramic, col. 7, line 6*).

Regarding Applicant's claim 3, Pace discloses that the sealing material is a metal, a metal alloy or a metal composite (*refractive metal, col. 7, lines 11-12*).

Regarding Applicant's claim 4, Pace discloses that the sealing element is a brittle-fracture (green ceramics, *col. 7, line 13*).

Regarding Applicant's claim 5, Pace discloses that the sealing material has a plate, spherical, conical or cylindrical shape (*figure 5a*).

Regarding Applicant's claim 6, Pace discloses that the brittle-fracture material is a glass plate, and wherein the at least one opening has the shape of a through-going cylindrical opening or through-going conical opening (*figure 5a*).

Regarding Applicant's claim 9, the limitation "wherein the brittle-fracture material and the sealing material are bonded by welding by movement" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pace discloses that the brittle fracture material and sealing material are bonded with a hermetic seal.

Regarding Applicant's claim 10, Pace discloses that the brittle-fracture material and/or the sealing material is at least partially coated (*metal layer, col. 7, lines 24-25*).

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Regarding Applicant's claim 11, Pace discloses that the sealing material is glass, glass ceramic or ceramic (*green ceramic, col. 7, line 13*).

Regarding Applicant's claim 13, the limitation "wherein the brittle-fracture material and the sealing material are bonded by ultrasound weld, high-frequency weld, rotary weld, friction weld, torsional or orbital weld, cold pressure weld or abrasive weld" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pace discloses that the brittle fracture material and sealing material are bonded with a hermetic seal.

Regarding Applicant's claim 14, Pace discloses that the brittle-fracture material and/or the sealing material is at least partially metal- and/or plastic-coated (*metal layer, col. 7, lines 24-25*).

Regarding Applicant's claim 15, Pace discloses a molded element (*chip, col. 6, line 66*) that comprises brittle-fracture material (*substrate, col. 7, line 1*) with at least one opening (*figure 5a*) to a cavity that is sealed only with sealing material (*feed-throughs, col. 7, line 2*) which is hermetically sealed (*col. 7, lines 10-11*) to said brittle-fracture material.

The limitation "wherein the brittle-fracture material and the sealing material are permanently bonded together by a cold pressure weld" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The

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method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pace discloses that the brittle fracture material and sealing material are permanently bonded with a hermetic seal.

Regarding Applicant's claim 17, Pace discloses that the sealing material is a brittle-fracture material (*green ceramic, col. 7, line 13*).

Regarding Applicant's claim 18, Pace discloses that the sealing material is glass, glass ceramic or ceramic (*green ceramic, col. 7, line 13*).

Regarding Applicant's claim 21, Pace discloses that the brittle-fracture material has one opening (*figure 5a*).

Regarding Applicant's claim 22, Pace discloses that the brittle-fracture material has two openings (*figure 5a*).

Regarding Applicant's claims 26 and 27, these claims contain method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pace discloses that the brittle fracture material and sealing material are bonded with a hermetic seal.

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Regarding Applicant's claim 29, Pace discloses a molded element (*chip, col. 6, line 66*) that comprises brittle-fracture material (*substrate, col. 7, line 1*) with at least one opening (*figure 5a*) that is sealed only with sealing material (*feed-throughs, col. 7, line 2*) which is hermetically sealed (*col. 7, lines 10-11*) to said brittle-fracture material.

The limitation "wherein the brittle-fracture material and the sealing material are permanently bonded together by a diffusion weld" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pace discloses that the brittle fracture material and sealing material are permanently bonded with a hermetic seal.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

9. Applicant's arguments in the amendment filed November 24, 2004 regarding the previous rejection of record have been considered but are moot since the rejections have been withdrawn and due to the new grounds of rejection.

#### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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